

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

OP.No. 8177 of 2001(W)

PETITIONER:

**ST.ANTONY'S AQUA, PUTHUPANAM,
KOLENCHERRY P.O., ERNAKULAM
REP.BY ITS PROPRIETRIX BINILA SEBASTIAN,
W/O.PAULACHAN, AGED 30 YEARS,
VALLOORAN HOUSE, PARAPPURAM P.O.
KANJOOR.**

BY ADV. SRI.V.GIRI

RESPONDENTS:

- 1. UNION OF INDIA REP.BY THE MINISTRY OF HEALTH
AND FAMILY WELFARE DEPARTMENT
DEPAERTMENT OF HEALTH , SOUTH BLOCK,
NEW DELHI.**
- 2. THE BUREAU OF INDIAN STANDARDS, MANAK BHAVAN,
9 BAHADUR SHA ZAFAR MARG, NEW DELHI
REP.BY ITS DIRECTOR GENERAL.**
- 3. STATE OF KERALA REP.BY THE SECRETARY TO
GOVERNMENT HEALTH AND FAMILY WELFARE
DEPAERTMENT , SECRETARIAT, THIRUVANANTHAPURAM.**

**BY ADV. SRI.M.V.RAMACHANDRAN THAMBI (ACGSC)
SRI.S.R.AJITH, ADDL.CGSC**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

OP. NO.8177/2001

ORDER ON CMP. NO.13258/2001 IN OP. NO.8177/2001

DISMISSED

24.07.2007

SD/- T.R.RAMACHANDRAN NAI,JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE NOTIFICATION G.S.R. 760(E) DT. 29.9.2000.

EXT.P2:- COPY OF THE NOTIFICATION ISSUED BY THE BUREAU OF INDIAN STANDARDS FIXING THE SPECIFICATION FOR PACKAGED DRINKING WATER.

EXT.P3:- COPY OF THE COMMUNICATION DT. 2.2.01 FROM THE BUREAU OF INDIAN STANDARDS.

EXT.P5:- COPY OF THE REPORT AND ANALYSIS OF WATER DONE BY THE REGIONAL ANALYTICAL LABORATORY, ERNAKULAM KAKKANAD ON 22.5.01.

EXT.P6:- COPY OF THE REPORT AND ANALYSIS OF WATER DONE BY THE REGIONAL ANALYTICAL LABORATORY, ERNAKULAM KAKKANAD ON 25.5.01.

EXT.P7:- COPY OF THE REPORT AND ANALYSIS OF WATER DONE BY THE REGIONAL ANALYTICAL LABORATORY, ERNAKULAM KAKKANAD ON 22.6.01.

RESPONDENTS EXHIBITS

EXT.R1:- COPY OF THE GAZETTE NOTIFICATION NO. DT.MARCH 21, 2001 BY MINISTRY OF HEALTH & FAMILY WELFARE.

/TRUE COPY/

P.A. TO JUDGE

tss

T.R.RAMACHANDRAN NAIR, J.

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O.P.No.8177 of 2001-W.

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Dated this the 24th day of July, 2007.

J U D G M E N T

The petitioner is a small scale industrial unit engaged in the manufacture of purified drinking water. The process undertaken by the petitioner in this regard is to collect drinking water from pure sources and subject to vigorous treatment to enable to conform such specification. These are being packaged in 20 litre poly-carbonate jars.

2. The petitioner has filed this writ petition aggrieved by Ext.P2 issued by the Bureau of Indian Standards. In fact, he has also sought for a declaration that Ext.P1 notification issued by the Central Government under Section 23 of the Prevention of Food Adulteration Act amending Prevention of Food Adulteration Rules is ultra vires and therefore illegal and without jurisdiction. The second prayer in the writ petition is that Regulation No.6(2) of the Bureau of Indian Standards certification regulation in so far as it empowers the executive committee of the Bureau of Indian Standards to levy marking fee on any product sought to be certified by the Bureau is beyond the powers of the Bureau of Indian Standards under Section 15(2) read with Section 38(2)(e) of the Bureau of Indian Standards Act, 1986.

3. In CMP.No.13258/2001 this Court was pleased to issue an interim order which is reproduced below:

“In this original petition, petitioner challenges Ext.P1 notification which requires that no person shall sell or exhibit for sale packaged drinking water except under Bureau of Indian Standards certification mark. It is the contention of the petitioner that under the Prevention of Food Adulteration Act, the Central Government can make rules for prevention of adulteration of food. Section 2(v) of the Act specifically excludes drugs and water from the definition of Food and therefore a notification making rules prescribing certification by the Bureau of Indian Standards for water is outside the powers of Central Government and therefore Ext.P1 is illegal.

2. On behalf of the Central Government, Ext.R1 notification dated 21.3.2001 was produced wherein it is stated that under the powers of Sub clause (c) of Clause (v) of Section 2 of the Prevention of Food Adulteration Act, the Central Government declares packaged drinking water as “Food” for the purpose of the Act. I also note that Ext.R1 notification has made subsequently to Ext.P1 notification dated 29th September, 2000. Section 2(v)(c) empowers the Central Government to declare by notification any other article as food for the purpose of the Act. Water and drugs were already specifically excluded. Therefore, I am prima facie of the opinion that only legislature can include the same by amending the Act. Water and mineral water may be different. But here the notification is regarding the packaged water other than mineral water. Prima facie I am of the opinion that the character of water is not changed by packing. The main intention of the notification is to prevent the substandard water being sold by many establishments and thereby cheating the public and causing health hazards. Therefore, I am not in a position to stay Ext.P1 as such. Ext.P1 specifically states that the packaged water should be subjected to various treatments so that only disinfected water can be sold.

Considering the entire circumstances, if the petitioner complies with the specific requirements regarding quality of water as mentioned in Ext.P1, he shall not be compelled to

take certificate of Bureau of Indian Standards for a period of two months. Central Government to file a detailed counter affidavit and post the O.P. for hearing immediately after vacation. If any of the prescribed requirements except certification are not complied with by the petitioner, appropriate action can be taken against the petitioners in the meanwhile.”

The learned counsel appearing for the petitioner submits that in the light of the interim order the petitioner has been complying with the stipulations introduced by Ext.P2 and matters are being processed as directed in the interim order and no further orders are necessary in this writ petition. Therefore, maintaining the interim order this writ petition is closed. The legal contentions raised by the petitioner are left open.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-